The 29th November, 1967

No. 11175-3Lab-67/34896.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s. Technological Institute of Textiles, Bhiwani :—

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

REFERENCE NO. 4 OF 1964

between

THE WORKMEN AND THE MANAGEMENT OF M/S. TECHNOLOGICAL INSTITUTE OF TEXTILES, BHIWANI

Present :

Shri B. R. Ghaiye and Shri N. M. Jain, for the management.
Shri Sagar Ram Gupta, for the workmen.

AWARD

T.I.T. Karamchari Sangh, Bhiwani, which is a trade union of the workmen of M/s. Technological Institute of Textiles, Bhiwani, served a demand notice on the management of their mills on 4th October, 1963 calling upon them to pay bonus to all the workmen of the Mills for the year 1962-63 at the rate of 3 months wages of each workman. While the conciliation proceedings in respect of the said demand notice were still pending, the management announced that they would pay bonus for the said year at the rate of 10 per cent of the basic wages. They alleged that a settlement had been reached between them and the workmen on 1st February, 1964 according to which they had to pay bonus for the year 1962-63 at the rate of 10 per cent of the basic wages of the workmen. The trade union which had served the demand notice immediately protested against the announcement of the management and urged that the alleged settlement had never been reached. The conciliation proceedings having presumably failed, the then Punjab Government made a reference of the dispute to the Industrial Tribunal, Punjab, under clause(d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947,—*vide* their notification No. 1510-III-Lab-1-64/3171, dated 5th February, 1964. The only item of dispute which was mentioned in the said notification is as under :—

> "Whether the workers are entitled to the grant of bonus for the year 1962-63 ? If so, what should be its quantum and terms and conditions for its payment ?"

On receipt of the reference the Industrial Tribunal issued usual notices to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. In their written statement the management took a preliminary objection that the reference was invalid and without jurisdiction because of the fact that the workmen and had already entered into a settlement of the dispute with the management and the matter was no longer available for adjudication. Two issues were framed by the Tribunal which are as under :—

(1) Is the reference invalid and without jurisdiction for the reasons given in paragraph 10 of the written statement ?

(2) Whether the workers are entitled to the grant of bonus for the year 1962-63 ? If so, what should be its quantum and terms and conditions for its payment ?

Issue No. 1 was tried as a preliminary issue and was ultimately decided against the management,—*vide* order of the Tribunal, dated 12th May, 1965. Parties were then directed to lead their evidence on issue No. 2. The management was ordered to file their balance-sheet and both the parties were directed to file charts of surplus which according to them was available for distribution as bonus. The management filed the balance-sheet as also the chart. In their chart they showed that no surplus was at all available for distribution as bonus and that on the other hand there was a deficit of available surplus to the extent of Rs 4,38,167.00. The workmen filed their chart showing a sum of Rs 56, 19,355.00 as available surplus. Before the evidence in the case concluded the Punjab Reorganisation Act, 1966 came into force and by reason of section 93 of the said Act the case stood transferred to this Tribunal. On receipt of the records of the case parties were served with necessary notices to appear and pursue the case in this tribunal. The remaining evidence of the parties was then recorded and the representatives of both the parties were given an opportunity to address their arguments to me and this opportunity was availed by them.

It may be mentioned here that before arguments in the case could be heard by me the management filed a writ petition in the High Court of Punjab and Haryana challenging the validity of the transfer of the case from the Industrial Tribunal, Punjab, to this Tribunal. The delivery of the award was stayed by the High Court and the proceedings of the case, therefore, were adjourned *sine die*. The said writ petition ultimately failed and arguments of the representatives of the parties on the merits of the case were heard thereafter.

It is a common ground between the parties that the amount of bonus has to be determined according to the well-known full bench formula laid down by the Labour Appellate Tribunal in the Mill Owners case 1952 FJR-107 as approved by their Lordships of Supreme Court in a number of cases. It is also a common ground between the parties that to the amount of Rs 13,07,333.00 which is the profit shown in the balance-sheet, the following amounts have to be added back :—

		Rs
(1) Provision for contingencies	..	1,75,000.00
(2) Depreciation	..	4,84,113.00
(3) Development Rebate	..	2,27,663.00
(4) Items pertaining to last year	..	48,109.00

If these items are added to the profit as shown in the balance-sheet the total comes to Rs 22,42,218.00. The case of the workmen is that several more items have to be added back and some of those items are mentioned in the chart which was originally filed by the workmen and some others in the chart which the representative of the workmen handed over to me during the course of arguments. The items sought to be added back by the workmen and disputed by the management are discussed below seriatum :—

1. *Provisions for purchase of Export Quota Rights, Rs* 1,39,094.—The workmen allege that the amount covered by this items was never spent by the management in the year in question and that this amount cannot be allowed to be taken out from the profits of the Mill. It is not denied by the management that the amount had not been spent by them in the year in question and that like the amount of Rs 1,75,000 shown as provision for contingencies, this amount was also a provision made for purchase of export quota rights. Their plea, however, is that this amount has to be spent by the management and cannot remain unspent. After giving my careful consideration to the matter I feel that this amount must be added back. Till this amount is actually spent or till this is proved that this amount must be taken to have been spent the amount cannot be allowed to be taken out of the profits of the Mill simply because the management have made a provision for its being spent later on. This amount shall, therefore, be added back.

2. *College and School Expenses, Rs* 1,98,145.00.—In the balance-sheet this amount is shown as college and school expenses. The case of the management is that the mill belongs to a charitable trust created by the family of Birlas for the purpose of imparting technical education and that a college and school are being run along with the mill in question by the said charitable trust. The workmen do not deny this fact but they urge that they are concerned only with the mill in which they are employed and have nothing to do with the college and school run by the said charitable trust. Their case is that they are entitled to profit bonus on the basis of entire profits and not merely on the balance of profits after defraying the college and school expenses. It is contended that the concept of bonus is that the workmen are allowed to share profits of the concern because of the fact that they have also contributed to the earnings of the said profits. There appears to be some force in the contention of the workmen but I am not convinced that this amount should be added back. The trust as a whole is to be taken into consideration and profits of the trust after defraying all their expenses can only be taken into account. For the aforesaid reason I do not feel inclined to add back this amount.

3. *Bad Debts, Rs* 107.00.—The case of the workmen is that this amount should be added back but I do not feel that it should be so. This is always deemed to be a revenue loss and has in my opinion been rightly treated as such. This amount will not be added back.

4. *Wages etc. for past years paid in this year, Rs* 475.00.—The management have no objection to this item being added back. It will, therefore, be added back.

5. *Estimated items of capital nature included in raw material stores and spare parts amounting to Rs* 6,03,899.—In the balance-sheet the management showed an item amounting to Rs 24,15,599 which included the aforesaid amount. The workmen allege that a huge portion of expenses covered by this item amount to capital expenses and that the said portion must be added back. The management were called upon to file details of this item and also to provide a detailed statement of the spare parts and stores purchased by them in the year in question. Initially they showed their total unwillingness to provide the details. Later they provided some details but they were neither all nor enough to enable me to find which of the spare parts should be deemed to fall within the category of capital expenses. Obviously the workmen were handicapped in proving the exact amount which should be added back as capital expenses under this head. The accountant of the mill appeared as A.W. 6 but he also did not properly disclose the items, the expense of which should be debited to the capital account. Evidence on the point was, therefore, withheld by the management and this raises a presumption that if they had disclosed the various items properly and had produced all their accounts in respect of the same the said evidence would have gone against the interest of the management. The workmen suggest that 25 per cent of the expenses of this item should be added back as capital expenses. Taking the circumstances of the case into consideration I feel it will be enough to take 10 per cent of the same. Rupees 60,390.00 will, therefore, be added back under this head.

6 & 7. *Subsidy on tenements Rs* 37,950.00, *Subsidy for workshop Rs* 1,00,000.00.—It is is common ground between the parties that under the Industrial Housing Scheme the Government gave a subsidy of Rs 37,950.00 to the management in respect of construction of houses for the workmen. It is also a common ground that the Government gave a subsidy of Rs one lac to the management for construction of their workshop. The plea of the workmen is that these two amounts should be added back as they were earned by the management in the year in question. I regret I cannot accept this plea. None of the two amounts could be deemed to be a profit earned by the management and in any case no contribution was made by the labour in this respect. None of the two amounts, therefore, can be added back.

The workmen wanted some other items to be added back but ultimately they did not press them and I do not find any justification for adding back any other item. The total profits after addition of the aforesaid items, therefore, amounts to Rs 24,42,177.00.

In the calculation chart filed by the management they have claimed certain prior charges. They are :

(1) *an amount of Rs* 5,10,062.00 *on account of normal notional depreciation, as per statements A*-1 *to A*-9.

This is not disputed by the workmen and will, therefore, be allowed as a prior charge.

2. *Two amounts of Rs* 8,050.00 *and Rs* 8,088.00.—They are claimed as prior charges on account of surplus of sales on fixed assets and unspent liabilities written back. The workmen were not able to show that these charges could not be allowed. On the other hand both these items must be allowed, first one on the short ground that this income is of a capital nature and the second on the short ground that some liabilities had remained unspent and had to be written back.

3. *Income-tax on Rs* 22,26,080.00 *amounting to Rs* 8,70,984.00.—It is a common ground between the parties that the Mill in question is not liable to pay any income-tax because the income earned by it is exempt from taxation under the Indian Income-tax Act on the ground that it is an income earned by a charitable trust. The management, however, claim it as a notional amount and it is urged on their behalf that according to the full bench formula this amount is to be allowed as a prior charge irrespective of the fact whether the mill has actually to pay any tax or not. Reliance is placed by them on a ruling of their lordship of Supreme Court in Bharat Barrel and Drum Mfg. Co. *versus* Govind Gopal Waghmare and another reported in 1960-3 Supreme Court Report 378. They also rely on a prior award of one of my predecessors in Reference No. 61 of 1957. The case of the workmen is that charitable trust is altogether exempt from payment of income-tax and the claim of prior charge made by it under this head must be disallowed on this short ground. They contend that the notional amount of income-tax can only be allowed where the liability to pay the tax exists but the dispute only is what was the actual amount paid as income-tax. Reliance has been placed by them on three cases which are (1) Oriental Metal Pressing Works (Private) Ltd. *versus* its workmen and Another, 1965 II LLJ-99, (2) Workmen of New Chanab Co-operative Society

Versus New Chanab Co-operative Society, 1960 II LLJ-64 and (3) Co-operative Bank Employees Union, Bombay *Versus* Municipal Co-operative Bank Ltd., Bombay, 1960 ICR.p.110. In the reported case relied upon by the management the liability to pay the income-tax did admittedly exist and the only dispute between the parties was whether the notional amount should be allowed or whether the actual amount paid by the company should be allowed. In the penultimate paragraph of the judgement it was observed as under :—

"Lastly it is urged that according to the income-tax assessment which was actually made in this case sometime after the order of the tribunal, the appellant has been assessed to income-tax amounting to Rs 2.35 lacs. The appellant claims that it should be allowed this entire amount and not the notional figure calculated by us, namely, Rs 1.61 lacs as income-tax. We are of the opinion that for the purpose of the Full Bench Formula, the income-tax payable has to be deducted on the figures worked out according to the formula and it is immoterial what the actual income-tax paid is—Whether more or less—. In this particular case, the income-tax appears to be more because certain items which were challenged by the workmen but were allowed as proper expense by the tribunal have apparently not been allowed as proper expense by the income-tax department. The industrial tribunal, however, is not concerned directly with what the income-tax authorities assess as actual income-tax in a particular year ; it is concerned with working out the Full Bench formula in accordance with its notional calculations and this is what has been done in this case. There is no ground, therefore, for interference with the award of bonus for this reason either."

The observation quoted above clearly shows that the management in the said case was liable to pay the tax and that the only dispute was with regard to the amount of tax. This ruling, therefore, does not help the management.

The award of my predecessor also does not help the management as no reasons are assigned in the same and it is of a date when none of the rulings relied upon by the workmen had yet been reported.

In the Oriental Metal Press Works (Private) Ltd. *vs* its Workmen, 1965 II LLJ-p-99, the point that fell for decision was whether the tax under section 23-A of the Indian Income-tax Act which the management had never been called upon to pay could be allowed as a prior charge on the ground of notional payment. Their lordships of the Supreme Court held that the said amount could not be claimed as a prior charge because the said amount was never proved to have been paid. In column No. 2 at page 100 of the report their lordships observed as follows :—

"Regarding (ii) : As to the claim of Rs 84,000 as income-tax under section 23-A of the Income-tax Act, it is enough to say that levy of income-tax under section 23-A of the Income-tax Act depends upon certain conditions being fulfilled and in the absence of those conditions being fulfilled no income-tax under section 23-A is due. It is true that the Full Bench formula on the basis of which the available surplus is found is in many respect notional. Even so, we are of opinion that income-tax on the basis of section 23-A cannot be allowed even notionally, for income-tax under that section may or may not be leviable at all. Therefore, an employer, if he claims deduction for income-tax under section 23-A, must show that in actual fact such income-tax was levied on him for the year in dispute. In the present case the evidence on behalf of the appellant shows that no income-tax was in fact levied on the appellant under section 23-A of the Income-tax Act. In these circumstances the tribunal was right in disallowing any claim for income-tax under section 23-A of the Income-tax Act."

In Co-oporative Bank Employees Union, Bombay and Municipal Co-operative Bank Ltd., Bombay, 1960 ICRp-110 similar point was raised before the Industrial Court, Bombay, and the said Court observed as follows :—

"6. In regard to the demand for bonus for 1957-58 the item round which the main controversy has centred is that of income-tax. Shri Joshi for the Bank says that though the Bank is exempt from income-tax notional income-tax should be allowed. He relies on 1957 L.A.C.-475-Bombay fine worsted Manufacturers Castle Mills *v.* its workmen. This case relates to a partnership concern registered under Income-tax Act, and was not liable to income-tax. The tax payable by individual partners was claimed. The tribunal did not accept this contention but allowed notional income-tax. This cannot be a precedent for a Co-operative Society or Bank which is completely exempt. For allowing notional income-tax in the partnership concern the reason was that though the firm was not taxed the individual partners were liable to pay income-tax on their share of the profits and allowing notional income-tax was a way of making allowance for the individual partners' liability to pay tax. This decision, therefore, has no application to the present case. Similarly if an employer is exempt from payment of income-tax owing to previous year's losses brought forward, notional income-tax is allowed because the previous year's losses are not taken into consideration. Where the employer is completely exempt from tax and on account of this no burden is imposed then there can be no justification for allowing notional income-tax. The contention of Shri Joshi that notional income-tax should be deducted is, therefore, rejected."

In workmen New Chanab Co-operative Society and New Chanab Co-operative Society 1960-II-LLJ-p-640, a similar point was raised by the management before the Labour Court, Rohtak. The Society in that case was exempt from paying the income-tax for a period of five years from its formation. A dispute with regard to the bonus arose in respect of a year which fell within the said five years. The society was not liable to pay income-tax in respect of the said year but they claimed a notional amount as a prior charge and the said claim was repelled by the Labour Court, Rohtak. After giving my careful consideration to the matter I feel that this amount of income-tax claimed by the management as a prior charge cannot be allowed.

4. *Interest on Rs* 79,68,323.00 *capital invested by the trust at six per cent Rs* 4,78,099.00.—It is a common ground between the parties that the capital invested amounts to Rs 60,00,000.00 only. The management have claimed the interest of the balance amounting to Rs 19,68,323.00 on the ground that out of the current account this amount was used as capital. The workmen agree that the management is entitled to prior charge of Rs 3,60,000.00 as being six per cent on the capital of Rs 60,00,000.00. The management have failed to prove that the balance amount

of Rs 19,68,323.00 also formed the capital on which they were entitled to charge six per cent. They have also failed to prove that this amount was used as working capital throughout the year. The prior charge under this head will, therefore, amount to Rs 3,60,000.00 only.

5. *Interest at* 4 *per cent on Rs* 59,90,282.00 *reserve and other amounts employed in business as working capital during the year in question amount to Rs* 2,39,611.00.—The plea of the workmen is that the working capital used throughout the year was proved to be only Rs 11,44,69,500 and that the management is entitled only to two per cent interest on this amount. The management have filed some charts showing that the amount claimed by them was used as working capital but they have not been able to show that this amount was used as capital for the whole of the year. Taking the entire evidence into consideration I feel that the management should be allowed a prior charge of two per cent on half of this amount and this will come to Rs 59,903.00.

6. *Rehabilitation Reserve, Rs* 5,65,491.00.—The only evidence that the management have produced in respect of this claim consists of R. W. 1 Shri K. L. Monga, Estimater in a firm of Architects. This evidence is entirely hopeless and is not worth the paper on which it has been recorded. The sole qualification of the witness is that he passed overseer course privately. He has stated that "I was asked to estimate the value of the buildings of the Technological Institute of Textile and also its quarters. I have not prepared the written report on the estimates. I casually saw the buildings and I am of the opinion that the buildings and shed, etc., are of the value of Rs 16 per square foot of the covered area. I have not written any report giving any reason for coming to this conclusion..... I did not make any report to M/s Desai and Company. I did not take even any rough note of my inspection of the said buildings..... I have not brought my certificate of passing overseers's examination..... I do not know how many quarters there are in the Mill. The sheds of the buildings are also of different type. The construction of the sheds is of different type". The above evidence of this witness is totally unreliable and he cannot even be termed as an expert. There being no proper evidence on the point this amount cannot be allowed as a prior charge.

The total amount of the prior charges thus comes to Rs 9,46,103.00. The balance of profits, therefore, amounts to Rs 14,96,074.00 and this amount represents the available surplus. The workmen are in my opinion entitled to at least half of this amount as bonus. It is a common ground between the parties that the basic wages paid to the workmen during this year amounted to Rs 18,29,860. The amount for payment of bonus calculated above is roughly little more than 40 per cent of the said basic wages. In their statement of claims the workmen have asked for bonus equivalent to four months total wages earned by each of the workmen. There is no evidence on this record about the total wages which the workmen got in the year in question and obviously I cannot ascertain the same without proper data. In the circumstances I direct the management to pay bonus to their workmen in respect of the year in question at the rate of 40 per cent of the basic wages earned by each of the workmen. In case, however, the said 40 per cent exceeds the four months total wages of each of them the management will pay only the four months total wages. While making the above payment the management will be entitled to deduct such amount if any which they may have paid as bonus to some of their workmen under the alleged settlement, dated 5th February, 1964. The amount of bonus under this award shall be paid to the workmen within two months of the publication of the same in the official gazette.

No order as to costs.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Chandigarh.

Dated the 25th November, 1967.

No. 1353, dated Chandigarh, the 25th November, 1967.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana, Chandigarh.

No. 11176-3Lab-67/34898.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Wearwell Cycle Company (India) Ltd., New Iudustrial Township, Faridabad :—

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 72 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF M/S WEARWELL CYCLE COMPANY (INDIA) LTD., NEW INDUSTRIAL TOWNSHIP, FARIDABAD

Present—

Shri S. L. Gupta, for the management.

Shri Darshan Singh, for the workmen.

AWARD

An Industrial Dispute having come into existence between the workmen and the management of M/s Wearwell Cycle Company (India) Private Ltd., New Industrial Township, Faridabad, the same was referred to this Tribunal for adjudication under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947,—*vide* Haryana Government Notification No. 329-3F-III-Lab-67/24453, dated 16th August, 1967. The only item of dispute as mentioned in the said notification is as under :—

"Whether the interim relief should be granted to the workmen as per recommendations of the Central Wage Board for Engineering Industry If so, with what details and from which date ?

Usual notices were issued to the parties and in repsonse to the same the workmen filed their statement of claims and the management filed their written statement to the same. Necessary issues were then framed and the case was posted for evidence of the parties. On the date fixed for evidence the representative of the workmen Shri Darshan Singh made the following statement :—

"We have no evidence to produce in this case. In fact we withdraw our demands which may be dismissed as such".

The demand is accordingly dismissed.

No order as to costs:

Dated 25th November, 1967.

K.L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 1355, dated Chandigarh, the 25th November, 1967.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required by Section 15 of the Industrial Disputes Act, 1947.

K.L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 11177-3Lab-67/34918.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XI of 1947), the President of India is pleased to publish the following award of the Presiding-Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Bhiwani Textiles Mills, Bhiwani :—

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

REFERENCE No. 74 of 1964

between

THE WORKMEN AND THE MANAGEMENT OF M/S BHIWANI TEXTILE MILLS, BHIWANI

Present :

Shri B.R. Ghaiye and Shri N.M. Jain for the managsment

Shri S. R. Gupta for the workmen.

AWARD

An industrial dispute having come into existence between the workmen and the management of M/s Bhiwani Textile Mills, Bhiwani, the same was referred for adjudication to the Industrial Tribunal, Punjab under clause (d) of sub-section 1of Section 10 of the Industrial Disputes Act, 1947,—*vide* notification of the Punjab Government No. 572-SP-3-Lab-F-64/30867. dated 21st November, 1964. The following items of dispute are mentioned in the said notification :—

(1) whether the termination of services of Sarvshri Goverdhan Dass Sharma and Ram Lal is justified and in order ? If not, to what relief they are entitled ?

(2) whether the night-shift be made permanent along with workers working in this shift and whether the working of this shift be rtated along with the workers of other shifts ? If so, with what details ?

(3) whether the workmen are entitled to the grant of bonus for the year 1963 ? If so, what should be the quantum and terms and conditions of its payment ?

(4) whether the workmen of C shift working from 5.30 p.m. to 8.00 a.m. on Sundays are entitled to any overtime wages ? If so, at what rate and with what details ?

(5) whether the workmen working in the night shift are entitled to wages for 28th May, 1964.(being holidays) on account of death of Prime Minister of India. If not, to what relief they are entitled ?

(6) whether the workers mentioned in the enclosed list are entitled to any wages on the dates mentioned against each their names ? If not to what relief they are entitled ?

(7) whether the demotion of Shri Niranjan from a Winding Jobber to a Winder is justified and in order ? If not to what relief he is entitled to ?

(8) whether Shri Sher Singh, son of Lekh Raj should be made permanent and paid wages for the days he was returned since 7th April, 1964. If so, at what rate and with what details ?

(9) whether Shri Ram Saroop, son of Shri Arjan of Roving Department is entitled to any compensation due to loss suffered by him? If not, to what relief he is entitled ?

On receipt of the reference the Industrial Tribunal, Punjab issued usual notices and in response to the same the workmen filed their statement of claims and the management filed their detailed written statement to the same. Necessary issues were then framed by the said Tribunal and parties were called upon to lead their evidence in respect of the same. While the sase was still pending there and before the evidence of the parties could conclude, Punjab Re-organisation Act, 1966 came into force and by virtue of section 93 of the said Act the case stood transferred to this Tribunal. Notices were then issued to the parties and they were directed to produce their remaining evidence. After the evidence had concluded but before arguments could be heard in the case the management filed a writ petition in the High Court challenging the validity of the transfer of the case to this Tribunal. The proceedings in the case remained stayed for sometime due to this petition and on the said petition having been dismissed by the High Court, I heard the arguments of the representatives of the parties.

It may be mentioned here that during the pendency of this case the parties mutually settled all their disputes covered by items numbers 2, 4, 5, 6, 7, 8 and 9 in the reference and executed a deed of settlement in respect of the same on 28th December, 1966. The said deed has been produced before me and marked as EX-A. Both the parties have made statements that no adjudication of the aforesaid items is now needed in these proceedings. The representative of the workmen has also made a statement before me that the matter covered by item No. 3 of the dispute as mentioned in the notification is under negotiations for settlement between the workmen on the one hand and the Punjab Cloth Mills Ltd., Bhiwani on the other hand. He has further stated that he does not claim any relief in respect of the same against M/s Bhiwani Textle Mills, Bhiwani and that this matter need not, therefore, be adjudicated. In view of the statements of the representatives of the parties the only item that survives for adjudication now is item No. 1 of the dispute. I, therefore, proceed to record my findings on the said item.

This item relates only to two workmen namely Sarvshri Goverdhan Dass and Ram Lal. It is admitted by both the parties that these two workmen were at one time employed in the Punjab Cloth Mills. The said Mill had two retail shops one at Bhiwani and the other at Delhi. From time to time some workmen of the mill were transferred to work on the said shops and the aforesaid two workmen were also amongst those who had to work for sometime at the retail shop at Bhiwani and for sometime at retail shop in Delhi. It is admitted by both the parties that Goverdhan Dass was transferred to the shop at Delhi in August, 1953 and Ram Lal was transferred to that shop on 1st January, 1959. Both of them admittedly worked at that shop till they were retrenched by means of notices to each of them. Till 27th March, 1964 the Mill in question belonged to a limited company named as Punjab Cloth Mills Ltd., Bhiwani. On 27th March, 1964 the machinery and stocks, etc., of this Mill was purchased by the present management and the Mill was thereafter named as the Bhiwani Textile Mills. On 1st April, 1964 the trade union of the workmen of the Mill wrote at letter EX-A-54 to the present management asking them to clarify their position vis-a-vis the position of the workmen who were employees of the said Mills on the date of transfer of the Mills to the new management, i.e., on 27th March, 1964. The management replied to this letter as per EX-A-55. They stated in their reply ".....the position of the workers is as under :—

All the workers have been taken over by the transferee company and by reason of this change of employers the services of the workmen will not be interrupted and their terms and conditions are not less favourable than before. Further the new employer is liable to pay to the workmen in the event of their retrenchment, compensation on the basis that their services have been continuous and have not been interrupted by the transfer.

Yours faithfully,
for Bhiwani Textile Mills,
(Sd.) G. R. MANGLA."

The case of the workmen is that the two employees in question were the employees of the Mills on the date when they were retrenched and that their retrenchment was illegal *inter-alia* for the reasons that they were not the junior most employees and that the principal of "last come first go" was not observed. The case of the management on the other hand is that letter A-55 related only to the workmen who were working in the Mills at Bhiwani and that the two employees in question were not covered by the said letter. It is alleged on behalf of the management that they did not take over the cloth shop at Delhi but merely took over the stock of cloth lying in the said shop. On the basis of the above facts they have contended that the employees of the cloth shop were not taken over by the new management at any time and that they had been retrenched by the old management. Goverdhan Dass has appeared as his own witness as AW-3 and Ram Lal has appeared as his own witness as AW-4. Both of them have stated that they were originally the workmen of the Punjab Cloth Mills at Bhiwani and that they remained so till the date of their retrenchment because they were transferred by the said mills to the cloth shop at Delhi which belonged Mill. Their case is that their services in the Mill remained continuous till the time they were wrongly discharged The evidence of these two witnesses read with the evidence of Ram Avtar AW-12 and Hari Ram AW-15 fully establishes that the cloth shop as such was taken over by the new mangement and was run by the new management for a few days after 27th March, 1964. It appears that the new management later thought it fit to discontinue the shop and to employ some agents for future sales of cloth manufactured by them. AW-12, Ram Avtar who is the Munim of another firm and is an independent witness has stated that his firm purchased cloth from Bhiwani Textile Mills, on 31st March, 1964. He has produced a Bill EX. AW-12 which was issued by the Bhiwani Textile Mills, Bhiwani. He has further stated that the payment of this Bill was made by a cheque drawn in favour of and handed over to M/s Bhiwani Textile Mills. It is significant that the retrenchment notices issued to Ram Lal and Goverdhan Dass were signed by Shri Manohar Lal, AW-14 who has made a statement as a witness that he was never employed in the service of the Punjab Cloth Mills at any time and that he was in the employment of M/s Bhiwani Textile Mills when he signed the letters A-3 and A-56 retrenching Ram Lal and Goverdhan Dass. It is not denied by the management that if Ram Lal and Goverdhan Dass are treated to be the employees of the Mill they were not the junior most employees. It is also not denied that if they were treated to be the employees of the Mill their retrenchment was contrary to law inasmuch as it would violate the principle of "last come first go". The case of the management is that these two persons could not be treated as the employees of the Mills and could not be deemed to be covered by letter A-55. After giving my careful consideration to the matter I cannot accept this contention of the management. Letter A-54 written by the trade unionr eferred to all the employees who were in service on 27th March, 1964 and the reply of the management to the said letter which is A-55 must be deemed to relate to all the employees who were in service on 27th March, 1964. Ram Lal and Goverdhan Dass were certainly in employment on 27th March, 1964, and letters A-54 and A-55 must be deemed to cover them. As have already pointed out it is not denied by the management that they were at one time employees of the Mills and it is also not denied by the management that they were transferred to the cloth shop at Delhi. It is further not denied by the management that the cloth shop at Delhi belonged to the mill and that the Managing Director of the Mill used to go to Delhi to supervise the workmen of the said shop from time to time. The management has utterly failed to prove that the services of these two employees were at any time terminated by the Mill and that fresh appointment was given to the 2 employees in question at the cloth shop at Delhi. This is not even pleaded by the management. AW-13 has stated that the shop belonged to Bhiwani Textile Mills, Bhiwani after 27th March, 1964 and that new attendance register for the employees of the shop was maintained by the new management after 27th March, 1964. The management have not produced the said attendance register which presumbably bore the names of these two employees. The evidence of AW-5 Ram Kishan makes it clear that apart from the two employees in question a number of other employees used to be transferred from time to time to the Cloth Shops at Bhiwani and Delhi and that they were recalled from time to time to work again in the Mills. This fact is implidely admitted even by the AW-15 Hari Ram, Accountant and by RW-2. Taking the entire evidence into consideration it is in my opinion fully established on the record that these two employees were originally the employees of the Mills and were transferred to the cloth shop. It is also established that they always remained the employees of the Mills and that the new management purchased not merely the machines and other stocks of the Mills but that they also acquired the cloth shop at Delhi as such. It is also in my opinion established on record that letters A-54 and A-55 related to all the employees of the Mills including Shri Ram Lal and Goverdhan Dass and that letters A-3 and A-56 terminating the services of these two employees were in fact issued by the new management. On the above premises and on the admission of the management that these two employees were not the junior most employees it must be held that their retrenchment was illegal and injustified. In the circumstances I direct the management to re-instate them with continuity of service and without any break in the same and treat them as having never been retrenched. The management will also pay them half the wages for the period from the dates when the services of each of them were terminated to the dates each of them is re-instated.

No order as to costs.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

Dated the 24th November, 1967.

No. 1354, dated Chandigarh, the 25th November, 1967.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department Chandigarh as required by Section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

R.I.N. AHOOJA, Secy.